

In the United States Court of Federal Claims

No. 11-54 C

(Filed April 10, 2013)

* * * * *

CENTURY EXPLORATION *
NEW ORLEANS, LLC, *

Plaintiff, *

and *

CHAMPION EXPLORATION, LLC, *

Third-Party Plaintiff, *

v. *

THE UNITED STATES, *

Defendant. *

* * * * *

ORDER

On March 21, 2013, the court issued an opinion dismissing Count I in each of the respective complaints filed by Century Exploration New Orleans, LLC (Century) and Champion Exploration, LLC (Champion). The court ordered the Clerk's Office to enter judgment on Count I under Rule 54(b) of the Rules of the United States Court of Federal Claims (RCFC) to afford plaintiffs an opportunity to immediately appeal the court's dismissal of that count. The court also directed the parties to confer and to inform the court as to how they wished to proceed with respect to the remaining counts (Count II and Count III) set forth in the complaints.

On March 29, 2013, plaintiffs notified the court that they were appealing the dismissal of Count I to the United States Court of Appeals for the Federal Circuit (CAFC Case No. 2013-5073). In the Joint Status Report filed the same day, the

parties requested that the court continue the current stay of proceedings on Count II of plaintiffs' complaints. Furthermore, plaintiffs stated that they have agreed to voluntarily dismiss Count III of their complaints without prejudice, and that defendant is in accord with plaintiffs' proposal. The court will deem plaintiffs' expression of their agreement and intention as a motion to voluntarily dismiss Count III of their complaints.

The voluntary dismissal of a suit in this court is governed by RCFC 41(a). Defendant is apparently in agreement with a dismissal of Count III without prejudice, and this court has explained that "dismissal without prejudice is the norm rather than the exception." *Deuterium Corp. v. United States*, 21 Cl. Ct. 132, 134 (1990). Accordingly, it is hereby **ORDERED** that:

- (1) Plaintiffs' Motion for Voluntary Dismissal of Count III under RCFC 41(a)(2), filed as part of the Joint Status Report on March 29, 2013, is **GRANTED**, and Count III of plaintiffs' complaints is hereby **DISMISSED**, without prejudice;
- (2) The Clerk's Office is directed to **STAY** further proceedings in this matter until further order of the court; and
- (3) Within **thirty days** of the final appellate review of this court's dismissal of Count I of the complaints, the parties are directed to **FILE** a **Joint Status Report** proposing further proceedings in the subject matter.

/s/Lynn J. Bush

LYNN J. BUSH

Judge